

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOEL TOLBERT III,
Plaintiff,

v.

CONTRA COSTA COUNTY
MARTINEZ FACILITY, et al.,
Defendants.

Case No. 22-cv-03546 EJD (PR)

**ORDER OF SERVICE ON
DEFENDANT GAMBA;
DIRECTING DEFENDANT TO
FILE DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

Plaintiff, a California state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against officers at the Martinez Detention Facility in Contra Costa County, where he was formerly housed as a pretrial detainee. The amended complaint is the operative complaint in this action. Dkt. No. 13. The Court ordered Defendants to file a dispositive motion or notice regarding such motion on April 27, 2023. Dkt. No. 16. County Counsel filed notice that Defendant Deputy Gamba was no longer employed by Contra Costa County and had not been served. Dkt. No. 17. Pursuant to a court order, County Counsel subsequently filed information respecting Defendant Gamba's last known home address under seal. Dkt. Nos. 32, 33. Accordingly, the Court will order service of this matter on Defendant Gamba at the address provided by County Counsel.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy

1 of the amended complaint, Dkt. No. 13, all attachments thereto, a copy of the “Order of
2 Partial Dismissal and of Service of First Amended Complaint,” Dkt. No. 16, and a copy of
3 this order upon Defendant Deputy Gamba at the address filed under seal by County
4 Counsel. Dkt. No. 32. **The Clerk shall ensure that the address is not disclosed to**
5 **Plaintiff or the public.** The Clerk shall also mail a copy of this order to Plaintiff.

6 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil
7 Procedure requires them to cooperate in saving unnecessary costs of service of the
8 summons and the amended complaint. Pursuant to Rule 4, if Defendants, after being
9 notified of this action and asked by the Court, on behalf of Plaintiff, to waive service of the
10 summons, fail to do so, they will be required to bear the cost of such service unless good
11 cause shown for their failure to sign and return the waiver form. If service is waived, this
12 action will proceed as if Defendants had been served on the date that the waiver is filed,
13 except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file
14 an answer before **sixty (60) days** from the day on which the request for waiver was sent.
15 (This allows a longer time to respond than would be required if formal service of summons
16 is necessary.) Defendants are asked to read the statement set forth at the foot of the waiver
17 form that more completely describes the duties of the parties with regard to waiver of
18 service of the summons. If service is waived after the date provided in the Notice but
19 before Defendants have been personally served, the Answer shall be due sixty (60) days
20 from the date on which the request for waiver was sent or twenty (20) days from the date
21 the waiver form is filed, whichever is later.

22 3. No later than **ninety-one (91) days** from the date this order is filed,
23 Defendants shall file a motion for summary judgment or other dispositive motion with
24 respect to the claims in the amended complaint found to be cognizable above.

25 a. Any motion for summary judgment shall be supported by adequate
26 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
27 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
28 qualified immunity found, if material facts are in dispute. If any Defendant is of the

opinion that this case cannot be resolved by summary judgment, he shall so inform the Court prior to the date the summary judgment motion is due.

b. **In the event Defendants file a motion for summary judgment, the Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).**

4. Plaintiff's opposition to the dispositive motion shall be filed with the Court and served on Defendants no later than **twenty-eight (28) days** from the date Defendants' motion is filed.

Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment must come forward with evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is cautioned that failure to file an opposition to Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to the granting of the motion, and granting of judgment against Plaintiff without a trial. See Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18 F.3d 651, 653 (9th Cir. 1994).

5. Defendants shall file a reply brief no later than **fourteen (14) days** after Plaintiff's opposition is filed.

6. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

7. All communications by the Plaintiff with the Court must be served on Defendants, or Defendants' counsel once counsel has been designated, by mailing a true copy of the document to Defendants or Defendants' counsel.

8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the parties may conduct discovery.


9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the

1 court informed of any change of address and must comply with the court's orders in a
2 timely fashion. Failure to do so may result in the dismissal of this action for failure to
3 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

4 10. Extensions of time must be filed no later than the deadline sought to be
5 extended and must be accompanied by a showing of good cause.

6 **IT IS SO ORDERED.**

7 **Dated:** September 5, 2023


EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California